
**FIRST SUPPLEMENT
TO
AMENDED AND RESTATED
TRUST AGREEMENT**

Dated as of November 1, 2005

By and Between the

CITY OF SAN JOSE FINANCING AUTHORITY

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee**

Relating to

**City of San José Financing Authority
Tax-Exempt Lease Revenue
Commercial Paper Notes**

and

**City of San José Financing Authority
Taxable Lease Revenue
Commercial Paper Notes**

FIRST SUPPLEMENT TO AMENDED AND RESTATED TRUST AGREEMENT

THIS FIRST SUPPLEMENT TO AMENDED AND RESTATED TRUST AGREEMENT, dated as of November 1, 2005 (the "First Supplement to Trust Agreement"), is by and between the CITY OF SAN JOSE FINANCING AUTHORITY (the "Authority"), a public body, corporate and politic, duly organized and existing under the laws of the State of California (the "Authority"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee").

RECITALS

WHEREAS, the Authority is a joint exercise of powers authority duly organized and existing under and pursuant to that certain Joint Exercise of Powers Agreement, dated December 8, 1992, by and between the City of San José (the "City") and the Redevelopment Agency of the City of San José (the "Agency"), and under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"), and is authorized pursuant to the Act to borrow money for the purpose, among other things, of financing and refinancing public capital improvements for the City and the Agency; and

WHEREAS, the Authority has heretofore determined to adopt and implement a program under which the Authority will provide financing for certain public capital improvements for the City; and

WHEREAS, on January 28, 2004, pursuant to the Act and a Trust Agreement dated as of January 1, 2004 (the "the Original Trust Agreement"), between the Authority and the Trustee, the Authority delivered its first issue of its not to exceed \$98,000,000 Tax-Exempt Lease Revenue Commercial Paper Notes (the "Tax-Exempt Commercial Paper Notes"); and

WHEREAS, concurrently with the delivery of the first issue of the Tax-Exempt Commercial Paper Notes, the Authority and the City of San José, a charter city and municipal corporation duly organized and existing under and by virtue of its charter and the Constitution of the State of California (the "City"), entered into a Site Lease, dated as of January 1, 2004 (as amended, the "Site Lease"), pursuant to which the Authority leased from the City certain Property (as such term is defined therein) located in the City, including the buildings and improvements thereon owned by the City; and

WHEREAS, concurrently with the delivery of the first issue of the Tax-Exempt Commercial Paper Notes, the Authority and the City also entered into a Sublease, dated as of January 1, 2004 (as amended, the "Sublease"), pursuant to which the City subleased the Property from the Authority; and

WHEREAS, the City has utilized and intends to continue to utilize the proceeds for the issuance of the Tax-Exempt Commercial Paper Notes to finance the capital projects and related expenses listed on Exhibit E to the Original Trust Agreement (and which, together with the hereinafter defined CUSP Project, are listed on Exhibit E hereto) (together with the CUSP Project and the Central Service Yard Phase II Project and the demolition of structures and clean up at the City's Main Service Yard mentioned below, the "Projects"); and

WHEREAS, on November 9, 2004, the Authority and the City adopted resolutions, after a duly held public hearing, approving using proceeds of the Commercial Paper Notes (as defined below) to finance the installation and integration of computer software, software licensing,

hardware and certain related costs (including training and maintenance) related to the City's billing system referred to as the "Integrated Utility Billing, Customer Service and Performance Management System (the "CUSP Project"); and

WHEREAS, the City, in order to increase its flexibility with respect to a portion of the Projects, requested that, pursuant to the Act, the Authority issue its City of San José Financing Authority Taxable Lease Revenue Commercial Paper Notes (the "Taxable Commercial Paper Notes"); and

WHEREAS, in order to aid the City, the Authority determined to amend and restate the Original Trust Agreement and to amend certain related documents in order to provide for the issuance of its Taxable Commercial Paper Notes as well as its Tax-Exempt Commercial Paper Notes (collectively, the "Commercial Paper Notes"); and

WHEREAS, on June 23, 2005, the Authority and the Trustee entered into an Amended and Restated Trust Agreement (the "Amended and Restated Trust Agreement") in order to provide for the issuance of Taxable Commercial Paper Notes; and

WHEREAS, the City has now requested that the Authority increase the not-to-exceed maximum aggregate principal amount of Commercial Paper Notes from \$98,000,000 to \$116,000,000, and also to allow the additional use of the Commercial Paper Notes to finance the City's Central Service Yard Phase II Project and the demolition and clean up at the City's Main Service Yard; and

WHEREAS, the Authority has determined to enter into this First Supplement to Trust Agreement in order to provide for the authentication and delivery of the Commercial Paper Notes in an amount not to exceed \$116,000,000; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Trust Agreement do exist, have happened and have been performed in due time, form, and manner as required by law, and the parties hereto are duly authorized to execute and enter into this Trust Agreement; and

WHEREAS, the execution and delivery of this First Supplement to Trust Agreement have been duly approved and authorized by resolution of the Governing Board of the Authority;

NOW, THEREFORE, the parties hereto, in consideration of the premises and the mutual covenants and commitments of the parties set forth herein, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, hereby agree as follows:

AGREEMENT

Section 1. The following defined term is added to Section 1.02 of the Amended and Restated Trust Agreement, and made a part thereof:

"Central Service Yard Phase II Project Account" means the account of that name established within the Project Fund pursuant to Section 3.04 hereof, with a Tax-Exempt Subaccount and a Taxable Subaccount therein.

"Main Service Yard Project Account" means the account of that name established within the Project Fund pursuant to Section 3.04 hereof, with a Tax-Exempt Subaccount and a Taxable Subaccount therein.

"Project" means the capital projects located in Exhibit E to the Trust Agreement, as such Exhibit E may hereafter be amended, supplemented or revised.

Section 2. The following defined terms set forth in Section 1.02 of the Amended and Restated Trust Agreement are hereby revised as follows:

"City Representative" means the City Manager of the City, the Director of Finance of the City, the Deputy Director of Finance, or another official designated by any such officer and authorized to act on behalf of the City under or with respect to this Trust Agreement and all other agreements related thereto.

"Credit Facility" means that certain irrevocable direct-pay letter of credit issued on a several and not a joint basis by the Banks pursuant to the Reimbursement Agreement, as such letter of credit may be amended, modified or revised, and upon the issuance of any Alternate Credit Facility, such Alternate Credit Facility.

"Deputy Director of Finance" means the Deputy Director of Finance of the City or his or her written designee who is charged with administering debt.

"Maximum Principal Amount" means, \$116,000,000, or such lesser principal amount of indebtedness designated by the Authority which, if it bore interest at the Maximum Interest Rate and principal and such interest were payable annually as provided in the Sublease (commencing on the first day of the first Base Rental Period to commence after the date of calculation), could be fully retired from amounts then payable by the City as Maximum Base Rental (as adjusted pursuant to the Sublease) during the remaining term of the Sublease.

"Reimbursement Agreement" means the Letter of Credit and Reimbursement Agreement dated as of January 1, 2004, among the Authority, the City, the Banks and the Bank Agent, to facilitate the payment of Commercial Paper Notes, as amended by Amendment No. 1 to Letter of Credit and Reimbursement Agreement dated as of November 1, 2005, and as the same may be further amended, supplemented or otherwise modified from time to time, or other similar agreement executed from time to time in connection with the delivery of a Credit Facility.

"Site Lease" means that certain Site Lease, dated as of January 1, 2004, as amended by a First Amendment to Site Lease dated as of June 1, 2005, and as amended by a Second Amendment to Site Lease dated as of November 1, 2005, in each case by and between the Authority and the City, and including any further amendments or supplements thereto made or entered into in accordance with the terms hereof and of the Site Lease.

"Sublease" means that certain Sublease, dated as of January 1, 2004, as amended by a First Amendment to Sublease dated as of June 1, 2005, and as amended by a Second Amendment to Site Lease dated as of November 1, 2005, in each case by and between the Authority and the City, and including any further amendments or supplements thereto made or entered into in accordance with the terms hereof and of the Sublease.

Section 3. Section 3.01(e)(i)(G) of the Amended and Restated Trust Agreement is hereby amended to read as follows:

(G) If the issuance of such Commercial Paper Notes will result in an increase in the aggregate principal amount of Notes Outstanding in excess of \$116,000,000, then the Authority shall have also have received an opinion of Note Counsel that the interest on the Commercial Paper Notes proposed to be issued shall be exempt from California personal income tax and, with respect to Tax-Exempt Commercial Paper Notes, excludable from gross income for federal income tax purposes; and

Section 4. The first paragraph of Section 3.04 of the Amended and Restated Trust Agreement is hereby amended to read as follows:

There is hereby established in trust a special fund designated the "Project Fund" which shall be held by the Trustee and which shall be kept separate and apart from all other funds and moneys held by the Trustee. The Trustee shall administer the Project Fund. Within the Project Fund, the Trustee shall establish the following accounts: (i) the Garage Account, with a Tax-Exempt Subaccount and a Taxable Subaccount; (ii) the Technology, Furniture and Equipment Account, with a Tax-Exempt Subaccount and a Taxable Subaccount, (iii) the Existing City Hall Renovation Account, with a Tax-Exempt Subaccount and a Taxable Subaccount, (iv) the 2004 Civic Center Construction Account, with a Tax-Exempt Subaccount and a Taxable Subaccount, (v) the Interim City Facilities Account, with a Tax-Exempt Subaccount and a Taxable Subaccount, (vi) the CUSP Project Account, with a Tax-Exempt Subaccount and a Taxable Subaccount, (vii) the Central Service Yard Phase II Project Account, with a Tax-Exempt Subaccount and a Taxable Subaccount, (viii) the Main Service Yard Project Account, with a Tax Exempt Subaccount and a Taxable Subaccount, (ix) the Capitalized Interest Account, with a Tax-Exempt Subaccount and a Taxable Subaccount, (x) the Capitalized Fees Account, with a Tax-Exempt Subaccount and a Taxable Subaccount, and (xi) such other accounts or subaccounts within the Project Fund as shall be directed by the Authority in connection with any particular capital project or improvements. Each account or subaccount shall bear such additional designation as may be necessary or appropriate to distinguish it from every other account or subaccount. Moneys may be transferred from any account or subaccount to any other account or subaccount established under this Section in accordance with the written instructions of an Authorized Representative.

Section 5. Section 8.10 of the Amended and Restated Trust Agreement is hereby amended to read as follows:

Section 8.10. Direction of Remedies by Banks. Any provision herein to the contrary notwithstanding, when the Credit Facility is in effect and so long as the Banks have not wrongfully dishonored a drawing on the Credit Facility, the Trustee shall exercise the remedies provided for hereunder only if and as directed or consented to in writing by the Banks and shall not waive any Event of Default without the prior written consent of the Banks.

Section 6. Exhibit D to the Amended and Restated Trust Agreement is hereby replaced in its entirety by Exhibit D hereto.

Section 7. Exhibit E to the Amended and Restated Trust Agreement is hereby replaced in its entirety by Exhibit E hereto.

Section 8. Exhibit F to the Amended and Restated Trust Agreement is hereby replaced in its entirety by Exhibit F hereto.

Section 9. Exhibit G to the Amended and Restated Trust Agreement is hereby replaced in its entirety by Exhibit G hereto.

Section 10. Except as otherwise amended hereby, the Amended and Restated Trust Agreement shall remain in full force and effect.

Section 11. This First Supplement to Trust Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Trust Agreement to be duly executed by their officers duly authorized as of the date first above written.

CITY OF SAN JOSE FINANCING
AUTHORITY

By: Julia H. Cooper
Julia H. Cooper,
Deputy Director of Finance
of the City of San José

ATTEST:

Secretary
Secretary

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as trustee

By: _____
Authorized Officer

APPROVED AS TO FORM:
City Attorney

By: Camille Kennedy
Senior Deputy City Attorney

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Trust Agreement to be duly executed by their officers duly authorized as of the date first above written.

CITY OF SAN JOSE FINANCING AUTHORITY

By: _____
—Executive Director—

ATTEST:

Secretary

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as trustee

By: _____
Authorized Officer

EXHIBIT D

FORM OF PAYMENT REQUEST

[Letterhead of City of San José]

PAYMENT
REQUEST NO. _____

Wells Fargo Bank, National Association
707 Wilshire Boulevard, 17th Floor
Los Angeles, California 90017
Attention: Corporate Trust Department

Re: City of San José Financing Authority Tax-Exempt Lease Revenue Commercial
Paper Notes

and

City of San José Financing Authority Taxable Lease Revenue Commercial Paper
Notes

Ladies and Gentlemen:

Pursuant to [Section 3.05] [Section 3.07] of the Trust Agreement, dated as of January 1, 2004, as amended and restated as of June 1, 2005 and as further amended by a First Supplement to Amended and Restated Trust Agreement dated as of November 1, 2005 (as so amended and as may be further amended, modified or otherwise supplemented from time to time, the "Trust Agreement"), between the City of San José Financing Authority and Wells Fargo Bank, National Association, the Trustee, you are hereby instructed to disburse the sum of \$_____ from the [Administrative Expense Account of the Issuing and Paying Agent Fund][_____ Account of the Costs of Issuance Fund] established under the [Issuing and Paying Agent Agreement][Trust Agreement]. You are instructed to pay such disbursement to the order of the following payee, and for the following cost(s) and/or expense(s).

Payee: _____

Cost(s) and/or expense(s) for which disbursement is requested:

Dated: _____

City of San José

By _____
City Representative

EXHIBIT E
PROJECT LIST

<u>Project</u>	<u>Anticipated Amount</u>
Civic Center Offsite Employee Parking Garage (construction and land acquisition) ⁽¹⁾	\$20.797 million
Technology, Furniture and Equipment for Civic Center	\$45.25 0million
Civic Center Construction	\$9.036 million
Improvement to Existing City Facilities	\$1.600 million
City Hall Renovation Design (Reimbursement)	\$0.534 million
CUSP Project	\$11.00 0million
Central Service Yard Phase II Project	\$21.500 million
Main Service Yard Demolition and Clean-Up	\$2.100 million
Interest and fees	\$4.183 million

- (1) \$13.625 million represents the offsite Parking Garage land that was previously funded from the proceeds of the City of San José Financing Authority Bond Anticipation Notes and Lease Revenue Bonds, Series 2002 B, C and D (Civic Center Project). Additionally, \$14.956 of Tax-Exempt Commercial Paper Notes issued for the Civic Center Offsite Employee Parking Garage have been repaid through the proceeds of the California Statewide Communities Development Authority Revenue Anticipation Notes (Vehicle License Fee Program) received by the City, and is therefore not included in the \$20.797 million amount stated above.

EXHIBIT F

**FORM OF DISBURSEMENT REQUEST
(Project Accounts)**

[Letterhead of City of San José]

Wells Fargo Bank, National Association
707 Wilshire Boulevard, 17th Floor
Los Angeles, California 90017
Attention: Corporate Trust Department

Re: City of San José Financing Authority Tax-Exempt Lease Revenue Commercial
Paper Notes

and

City of San José Financing Authority Taxable Lease Revenue Commercial Paper
Notes

Request No. ____ for Disbursement From Project Fund

Dear Madams and Sirs:

In accordance with the terms of a Trust Agreement, by and between you and the City of San José Financing Authority, dated as of January 1, 2004, as amended and restated as of June 1, 2005, and as further amended by a First Supplement to Amended and Restated Trust Agreement dated as of November 1, 2005 (as so amended and as may be further amended, modified or otherwise supplemented from time to time, the "Trust Agreement"), you are hereby authorized and requested to make immediate disbursement of funds held by you for Project Costs (capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Trust Agreement) from the [Tax-Exempt Subaccount/Taxable Subaccount] of the _____ Account of the Project Fund.

I
You are hereby requested to pay from the [Tax-Exempt Subaccount/Taxable Subaccount] of the _____ Account of the Project Fund [or other account or subaccount within the Project Fund], to the Person designated on Schedule A attached hereto as payee(s), the sum set forth on said Schedule, in payment of all or a portion of the Project Costs described on said Schedule.

The undersigned hereby certifies that (i) no part of the amount requested herein has been included in any other request previously filed with you; (ii) to the knowledge of the undersigned, there has not been filed with or served upon the City of San José any notice of any lien or attachment upon or claim (except for any preliminary notice of lien as may be filed in accordance with law) affecting the right of the person, corporation or other entity stated below to receive payment of the amount stated below, which lien has not been released or will not be released simultaneously with the payment requested hereunder; (iii) the labor, services and/or materials covered hereby have been performed upon or furnished and the payment requested herein is due and payable under a purchase order, contract or other authorization. The undersigned further certifies that with respect to expenditures from the Project Fund funded with the proceeds of the Tax-Exempt Commercial Paper Notes that (i) not more than 5% of the amount disbursed to date from the Project Fund, including the amount disbursed hereby, will be used to provide for property that will be used in any trade or business of any non-governmental person (i.e., any entity or person other than a state or a political subdivision thereof), other than as a member of the general public; and (ii) not more than 5% of the amount disbursed to date from the Project Fund, including the amount disbursed hereby, will be used to pay working capital expenses relating to the start-up of the Project.

Dated: _____

CITY OF SAN JOSE

By: _____
Title: [Director of Public Works/Director of
General Services/Director of
Information Technology/City
Manager]

Approved: _____

CITY OF SAN JOSE FINANCING AUTHORITY

By: _____
Treasurer/Deputy Director of Finance

Schedule A

Payee
(include address)

Description
of Costs

Amount

EXHIBIT G

FORM OF ISSUANCE REQUEST TO PAYING AGENT*

REQUEST NO. ____

[This is to confirm the instructions previously given by telephone on this date.]

Pursuant to Section 3.01 of the Trust Agreement, dated as of January 1, 2004, as amended and restated as of June 1, 2005, and as amended by the First Supplement to the Amended and Restated Trust Agreement dated as of November 1, 2005 (as so amended and as may be further amended, modified or otherwise supplemented from time to time, the "Trust Agreement"), both between the City of San José Financing Authority (the "Authority") and Wells Fargo Bank, National Association, as trustee (the "Trustee") the undersigned, an Authorized Representative of the Authority does hereby request Wells Fargo Bank, National Association, as Issuing and Paying Agent (the "Issuing and Paying Agent") under the Issuing and Paying Agent Agreement dated as of January 1, 2004 between the Authority and the Issuing and Paying Agent, as amended and restated as of June 1, 2005, to issue Commercial Paper Notes, as follows:

- | | | |
|----|-----------------------------------------------------------------------|----------------|
| 1. | Designation of Commercial Paper:
(including Tax-Exempt or Taxable) | _____
_____ |
| 2. | Date of Requested Issuance: | _____ |
| 3. | Total Principal Amount: | \$ _____ |
| | Renewal Notes: | \$ _____ |
| | Original Issue Notes | \$ _____ |
| 4. | Total Purchase Price for Notes**: | \$ _____ |

The maturity dates and principal amounts for the Commercial Paper Notes and instructions for the deposit by the Trustee of the proceeds of the Commercial Paper Notes are set forth in Exhibit A hereto.

[Select one of the following paragraphs]

[The Authority is using the book-entry system with respect to the Commercial Paper Notes and, accordingly, the Issuing and Paying Agent shall debit the purchaser's account at the Depository against credit to the Issuing and Paying Agent's account at the Depository, which purchase shall then be recorded on the books and records of the Issuing and Paying Agent maintained with respect to each Master Note.]

or

*To promptly follow telephone issuance request, given no later than 1:00 p.m. (New York City time) on the [date prior to] the Date of Requested Issuance specified in Paragraph I herein.

**If the Purchase Price is other than the Principal Amount, the Dealer shall certify, in writing, as to the Purchase Price of such Notes.

[The Authority is no longer using the book-entry system with respect to the Commercial Paper Notes and, accordingly, the Issuing and Paying Agent shall authenticate the Commercial Paper Notes by countersignature of its authorized officer or employee and deliver them to the named purchaser or purchasers thereof upon receipt of payment in accordance with the custom then prevailing in the New York financial market in regard to such Commercial Paper Notes, and the rules of the New York Clearinghouse shall apply thereto.]

Pursuant to Section 3.01 of the Trust Agreement, the undersigned hereby certifies that all action on the part of the Authority necessary for the valid issuance of the Commercial Paper Notes being issued pursuant to this request has been taken, that all provisions of California law necessary for the valid issuance of such Commercial Paper Notes with provision for interest exemption from California personal income taxation have been complied with[, that all provisions of federal law for the valid issuance of Tax-Exempt Commercial Paper Notes with provision for the exclusion of interest from gross income for federal income tax purposes have been complied with,] and that such Commercial Paper Notes in the possession of the Holders thereof will be valid and enforceable obligations of the Authority according to their terms, subject to the exercise of judicial discretion in accordance with general principles of equity and bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted.

[The Authority further certifies that it is in compliance with the conditions to the issuance of Tax-Exempt Commercial Paper Notes specified in Section 3.01(e) of the Trust Agreement, and hereby reconfirms all of its expectations set forth in the Nonarbitrage Certificate as of the date of this Issuance Request.]

All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Trust Agreement.

Date: _____
Request Number: _____

CITY OF SAN JOSE FINANCING AUTHORITY

By: _____
Authorized Representative

cc: Wells Fargo Bank, National Association,
as trustee

Exhibit A
to
Form of Issuance Request to Paying Agent
Term of Commercial Paper Notes:

Renewal Notes

Maturity Date

Principal Amount

Original Issue Notes

Maturity Date

Principal Amount

The proceeds of Renewal Notes shall be deposited in the Bank Reimbursement Account of the Issuing and Paying Agent Fund, as provided in Section 3.02(a) of the Trust Agreement. The proceeds of Original Issue Notes shall be deposited as follows:

_____ Subaccount of the Garage Account of the Project Fund \$ _____

_____ Subaccount of the Technology, Furniture and Equipment Account of the Project Fund \$ _____

_____ Subaccount of the Existing City Hall Renovation Account of the Project Fund \$ _____

_____ Subaccount of the 2004 Civic Center Construction Account of the Project Fund \$ _____

_____ Subaccount of the Interim City Facilities Account of the Project Fund \$ _____

_____ Subaccount of the CUSP Project Account of the Project Fund \$ _____

_____ Subaccount of the Central Service Yard Phase II Project Account of the Project Fund \$ _____

_____ Subaccount of the Main Service Yard Project Account of the Project Fund \$ _____

_____ Subaccount of the Capitalized Interest Account of the Project Fund \$ _____

_____ Subaccount of the Capitalized Fees Account of the Project Fund \$ _____

_____ Account of the Costs of Issuance Fund \$ _____